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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of Sections of the) **MM Docket No. 92-266**
Cable Television Consumer Protection)
and Competition Act of 1992;) **CS Docket No. 96-60**
Rate Regulation)
)
Leased Commercial Access)

To: The Commission - **Mail Stop 1170**

REPLY COMMENTS OF SHERJAN BROADCASTING CO., INC.

These Reply Comments are filed by Sherjan Broadcasting Company, Inc. licensee of WJAN-LP in Miami, Florida in response to the Commission's "Further Notice of Proposed Rulemaking" in this proceeding, FCC 96-122, released March 19, 1996.

NCTA complains that they will lose the use of channels, but they conveniently overlook that they have been using channels which Congress said were to be used for leased access for years. The number of channels required for leased access represents a

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small percentage of a cable system that will not affect the overall programming content of a cable system. As to quality, the cable industry has won no "Oscars" or "Emmys" but many independent producers have. If independent programmers do not produce quality, the marketplace will force them to the side. There would be very few "shopping channels" if local programs were allowed access to "the airwaves" and certainly a "local" cooking show is more informative and tailored to local needs than a national cooking show.

WJAN-LP is a local programmer, and even though we are not on cable we have more audience than four of the must carry full power stations on Miami area cable systems. We have a greater audience than WHFT, WCTD, WEYS, and WYHS.

WJAN's programming and professional production quality is as good as any network station in the U.S. We are the winner of two national first prize awards in our first year. But one cable company is asking for over \$300,000 per year to reach 55,000 subscribers. The quality of programming has nothing to do with cable's reaction. It is driven only by irrational greed.

In reply to Cox' statement that the fee formula would undercompensate operators because they would not be able to recoup local advertising and subscriber revenues, any



operator who is selling advertising recoups the lost advertising in two ways. One is by receiving it from the lease access programmer, because under the proposed new formula, they are reimbursed for the lost advertising; two, any salesman worth his salt can switch the bumped advertising to the remaining 85% of the channels, as none of the systems are sold out. In addition to the above, they are now receiving income instead of paying out licensing fees, so the income will increase with "leased access." Quality local leased access programming will also increase subscriber penetration which means even more revenue.

Rainbow programming said traditional programmers "would be severely impeded in continuing to distribute their existing services and be irreparably harmed in their ability to develop new high-quality services." We wish to submit that LPTV operators are no less independent programmers than Rainbow and have been severely impeded by the cable industry's resistance to having leased access as mandated by Congress and the monopolistic programming created by the cable industry such as, "Liberty and TCI", owners of such programs such as QVC, Home Shopping, Nickelodeon. In other words the cable industry is simply promoting their own product to the detriment of the independent programmer. In addition, Rainbow felt that any new rate should apply only



to new channels. This would not be an issue if the cable industry had participated in leased access in the first place. In reply to TCI's argument about repetitive programming, one of the advantages of the free market system is the natural survival of the fittest. Independent programmers who create good, innovative programs will be able to attract advertisers, and survive, while those who create mediocre programs will not survive.

US West attacked, "the Commission's naked assertion that current rates are unreasonable." In fact the maximum rate for leased access is so high and the cable industry so hostile that there has been no leased access since the Congress reaffirmed it in 1992. As an LPTV operator who has spent the last two and a half years begging, cajoling, and offering money to many operators for carriage or leased access, I can tell of many cases where I have not been able to get a reply but have been stone-walled. I can show US West a stack of letters from subscribers three and a half feet high requesting carriage of WJAN-LP, but we have not been allowed to lease access time at a reasonable rate in some cases while other cable companies will not even reply to our letters and phone calls. The naked truth is that there has not been leased access in this country because the cable industry, although not technically breaking the law has done so morally over and over again and has thwarted the intent of Congress of the United States.



In reply to the joint filing of Outdoor Life, Speedvision, Golf Channel and BET on Jazz, they do not take into account the hundreds of millions of dollars that low power stations in the US are spending serving large minorities in urban areas who have not been able to get on cable because of cable's callous actions

Leased access came into existence in 1984 and was further mandated in 1992. National programmers have had a free ride at the expense of local programmers for over a decade. All we are asking for is the 1984 and 1992 laws to be followed.

MSO's and Turner have threatened lawsuits challenging the constitutionality of any leased access rule. The Commission, therefore, is in a no-win situation. If the cable industry challenges the constitutionality of Section 612, so be it. But conversely, if the Commission does not go through with a reasonable program, we will challenge the Commission in court, and to the Supreme Court if necessary.

Respectfully submitted,

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